

Representative Kim Coleman proposes the following substitute bill:

STUDENT RIGHT TO ACTIVE COUNSEL

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim Coleman

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill enacts language related to disciplinary proceedings in an institution of higher education.

Highlighted Provisions:

This bill:

- ▶ enacts Title 53B, Chapter 26, Campus Individual Rights Act, including enacting provisions:
 - requiring an institution of higher education to allow certain parties to have legal representation at a disciplinary proceeding;
 - governing the exchange of evidence at a disciplinary proceeding; ~~and~~
 - prohibiting certain conflicts of interest in a disciplinary proceeding ~~and~~
 - ~~• authorizing a cause of action; and~~
 - ~~amends applicable governmental immunity provisions.]~~

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



1st Sub. H.B. 337

26 H→ [AMENDS:

27 ——— ~~63G-7-301, as last amended by Laws of Utah 2015, Chapter 342]~~ ←H

28 ENACTS:

29 ~~53B-26-101~~, Utah Code Annotated 1953

30 ~~53B-26-102~~, Utah Code Annotated 1953

31 ~~53B-26-201~~, Utah Code Annotated 1953

32 ~~53B-26-203~~, Utah Code Annotated 1953

33 ~~53B-26-204~~, Utah Code Annotated 1953

34 ~~53B-26-205~~, Utah Code Annotated 1953

35 ~~53B-26-206~~, Utah Code Annotated 1953

36 ~~53B-26-207~~, Utah Code Annotated 1953

37 H→ [~~53B-26-208, Utah Code Annotated 1953]~~ ←H



39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **53B-26-101** is enacted to read:

CHAPTER 26. CAMPUS INDIVIDUAL RIGHTS ACT

Part 1. General Provisions

53B-26-101. Title.

44 (1) This chapter is known as "Campus Individual Rights Act."

45 (2) This part is known as "General Provisions."

46 (3) The provisions of this part may not be interpreted to:

47 (a) govern campus law enforcement departments or law enforcement personnel; or

48 (b) otherwise replace or amend criminal procedures that govern law enforcement

49 activities.

50 Section 2. Section **53B-26-102** is enacted to read:

53B-26-102. Definitions.

52 As used in this chapter, "institution" means an institution of higher education listed in

53 Section **53B-1-102.**

54 Section 3. Section **53B-26-201** is enacted to read:

Part 2. Student Legal Representation

53B-26-201. Definitions.

57 (1) "Academic dishonesty" means an act of dishonesty relating to a student's academic
 58 work or performance.

59 (2) "Accused student" means an individual enrolled in an institution who has allegedly
 60 violated a policy or rule.

61 (3) "Accused student organization" means a student organization that has allegedly
 62 violated a policy or rule.

63 (4) "Alleged victim" means an individual whose rights are allegedly infringed or who
 64 is otherwise allegedly harmed by an accused student's or student organization's violation of a
 65 policy or rule.

66 (5) "Evidence" means information that is inculpatory or exculpatory as it relates to an
 67 accusation against an accused student or accused student organization, including:

68 (a) a complainant statement;

69 (b) a third-party witness statement;

70 (c) electronically stored information;

71 (d) a written communication;

72 (e) a post to social media; or

73 (f) demonstrative evidence.

74 (6) ~~Ĥ→~~ (a) ~~←Ĥ~~ "Full participation" means the opportunity in a student or student
 74a organization

75 disciplinary proceeding to ~~Ĥ→~~ [:

76 ~~—— (a) make opening and closing statements;~~

77 ~~—— (b) examine and cross-examine a witness; and~~

78 ~~—— (c) provide an accused student, an accused student organization, or an alleged victim~~

79 ~~support, guidance, or advice.] participate to the full extent that the student or student~~
 79a ~~organization would otherwise be allowed to participate under an institution's policy or rule~~

79b ~~and provide an accused student, accused student organization, or an alleged victim support,~~
 79c ~~guidance, or advice.~~

79d (b) "Full participation" includes the ability to make opening and closing statements or,
 79e in accordance with Section 53B-26-207, present and question a witness.

79f (c) "Full participation" does not include a procedural right other than a right described
 79g in Subsection (6)(a) or (b). ~~←Ĥ~~

80 (7) "Legal representation" means an attorney or, at a person's sole discretion, a
 81 nonattorney advocate.

82 (8) "Policy or rule" means a policy or rule of an institution that, if violated, may result:

83 (a) for a student, in suspension of 10 calendar days or more or expulsion from the
84 institution; or

85 (b) for a student organization, in the suspension or the removal of institutional
86 recognition of the student organization.

87 (9) "Proceeding" means an adjudicatory meeting, whether formal or informal,

88 including an appeal that is:

89 (a) required by a policy or rule; or

90 (b) is held to determine whether a policy or rule has been violated.

91 (10) (a) "Student disciplinary proceeding" means a proceeding initiated by an

92 institution to determine whether an accused student has violated a policy or rule.

93 (b) "Student disciplinary proceeding" does not include a proceeding that solely

94 involves a student's academic dishonesty.

95 (11) "Student organization" means a club or other organization that:

96 (a) meets during noninstructional time;

97 (b) is recognized by the institution at which the institution meets; and

98 (c) the majority of the organization's members are current students at the institution.

99 (12) (a) "Student organization disciplinary proceeding" means a proceeding initiated by

100 an institution to determine whether an accused student organization has violated a rule or

101 policy.

102 (b) "Student organization disciplinary proceeding" does not include a proceeding that

103 solely involves a student's academic dishonesty.

104 Section 4. Section **53B-26-203** is enacted to read:

105 **53B-26-203. Student disciplinary proceedings -- Legal representation.**

106 (1) An institution may not prohibit:

107 (a) an accused student from being represented, at the accused student's expense, by
108 legal representation at a student disciplinary proceeding that pertains to the accused student; or

109 (b) an accused student's legal representation from full participation in a student
110 disciplinary proceeding that pertains to the accused student.

111 (2) An institution may not prohibit:

112 (a) an alleged victim from being represented, at the alleged victim's expense, by legal
113 representation at a student disciplinary proceeding that pertains to the alleged victim; or

114 (b) the alleged victim's legal representation from full participation in a student
115 disciplinary proceeding that pertains to the alleged victim.

116 (3) (a) An institution shall provide an accused student described in Subsection (1), or
117 an alleged victim described in Subsection (2), written notice of the accused student's or alleged
118 victim's rights under this section.

119 (b) Unless there are exigent circumstances that reasonably justify proceeding without
120 providing notice under Subsection (3)(a), an institution shall establish policies and procedures
121 to ensure that the institution provides written notice of the accused student's or alleged victim's
122 rights as soon as practicable but no later than seven days before a student disciplinary
123 proceeding that pertains to the accused student or alleged victim.

124 Section 5. Section **53B-26-204** is enacted to read:

125 **53B-26-204. Student organization disciplinary proceedings -- Legal**
126 **representation.**

127 (1) An institution may not prohibit:

128 (a) an accused student organization from being represented, at the accused student
129 organization's expense, by legal representation at a student organization disciplinary proceeding
130 that pertains to the accused student organization; or

131 (b) an accused student organization's legal representation from full participation in a
132 student organization disciplinary proceeding that pertains to the accused student organization.

133 (2) An institution may not prohibit:

134 (a) an alleged victim from being represented, at the alleged victim's expense, by legal
135 representation at a student organization disciplinary proceeding that pertains to the alleged
136 victim; or

137 (b) the alleged victim's legal representation from full participation in a student
138 organization disciplinary proceeding that pertains to the alleged victim.

139 (3) (a) An institution shall provide an accused student organization described in
140 Subsection (1), or an alleged victim described in Subsection (2), written notice of the accused
141 student organization's or alleged victim's rights under this section.

142 (b) Unless there are exigent circumstances that reasonably justify proceeding without
143 providing notice under Subsection (3)(a), an institution shall establish policies and procedures
144 to ensure that the institution provides written notice of the accused student organization's or
145 alleged victim's rights as soon as practicable but no later than seven days before a student
146 organization disciplinary proceeding that pertains to the accused student organization or
147 alleged victim.

148 Section 6. Section **53B-26-205** is enacted to read:

149 **53B-26-205. Exchange of evidence.**

150 (1) The parties to a student disciplinary proceeding or student organization disciplinary
 151 proceeding shall make a good faith effort to exchange any evidence the parties intend to use in
 152 the respective proceeding.

153 (2) Nothing in this part may be interpreted to:

154 (a) provide for formal or informal discovery beyond the exchange of evidence
 155 described in Subsection (1); or

156 (b) incorporate or bind an institution to:

157 (i) the Utah Rules of Civil Procedure or the Utah Rules of Evidence; or

158 (ii) the Federal Rules of Civil Procedures or the Federal Rules of Evidence.

159 Section 7. Section **53B-26-206** is enacted to read:

160 **53B-26-206. Conflict of interest.**

161 (1) An institution shall prohibit an individual employed by or otherwise representing an
 162 institution from acting as an adjudicator, hearing officer, or appellate hearing officer if the
 163 individual has also served in one of the following roles for purposes of a student or student
 164 organization disciplinary proceeding:

165 (a) an advocate or counselor for an alleged victim, accused student, or accused student
 166 organization;

167 (b) an investigator;

168 (c) an ~~H~~→ [institutional prosecutor] administrator presenting arguments and evidence
 168a on behalf of the institution ~~←H~~ ; or

169 (d) an advisor to a person described in Subsection (1)(a), (b), or (c).

170 (2) If an individual employed by the institution or otherwise representing an institution
 171 serves as an investigator and an ~~H~~→ [institutional prosecutor] administrator presenting
 171a arguments and evidence on behalf of the institution ~~←H~~ for the alleged violation of a policy or
 172 rule, the institution shall advise an accused student, accused student organization, or an alleged
 173 victim prior to the investigation proceeding.

174 (3) An individual may not serve as an investigator or ~~H~~→ [institutional prosecutor]
 174a administrator presenting arguments and evidence on behalf of the institution ~~←H~~ and an
 175 advocate for an accused student, accused student organization, or an alleged victim.

176 Section 8. Section **53B-26-207** is enacted to read:

177 **53B-26-207. Application -- Institution policies.**

178 (1) Nothing in this part may be interpreted to prohibit an institution from temporarily
 179 suspending an accused student or accused student organization pending the completion of a
 180 student or student organization disciplinary proceeding.

181 (2) (a) An institution shall enact policies to govern proceedings in which a student has
 182 a right to active counsel in accordance with this part.

183 (b) An institution may adopt a policy requiring an accused student's, accused student
 184 organization's, or an alleged victim's attorney or advocate to submit questions for an opposing
 185 party first to a hearing officer.

186 ~~H→ [Section 9. Section 53B-26-208 is enacted to read:~~

187 ~~53B-26-208. Cause of action:~~

188 ~~(1) An accused student, accused student organization, or alleged victim may bring an~~
 189 ~~action in a court of competent jurisdiction for an alleged violation of this part by an institution.~~

190 ~~(2) If the court finds that an institution committed a violation under Subsection (1), the~~
 191 ~~court may award, as applicable, the accused student, accused student organization, or alleged~~
 192 ~~victim:~~

193 ~~(a) compensatory damages;~~

194 ~~(b) reasonable court costs incurred;~~

195 ~~(c) reasonable attorney fees incurred;~~

196 ~~(d) monetary damages;~~

197 ~~(i) in an amount equal to or more than the cost of tuition paid by or on behalf of the~~
 198 ~~accused student or alleged victim to the institution for the academic period in which the~~
 199 ~~violation occurred; and~~

200 ~~(ii) in an amount equal to or more than the amount of scholarship funding an accused~~
 201 ~~student has lost as a result of the outcome of a student disciplinary proceeding; and~~

202 ~~(e) any other relief the court determines just.~~

203 ~~(3) An action based upon a cause of action under this part shall be commenced within~~
 204 ~~one year after the date that an accused student, accused student organization, or alleged victim~~
 205 ~~receives final notice of the outcome of the student or student organization disciplinary~~
 206 ~~proceeding.~~

207 ~~Section 10. Section 63G-7-301 is amended to read:~~

208 ~~63G-7-301. Waivers of immunity.~~

209 ~~(1) (a) Immunity from suit of each governmental entity is waived as to any contractual~~
 210 ~~obligation.~~

211 ~~(b) Actions arising out of contractual rights or obligations are not subject to the~~⊗

212 ~~requirements of Sections 63G-7-401, 63G-7-402, 63G-7-403, or 63G-7-601.~~

213 ~~—— (c) The Division of Water Resources is not liable for failure to deliver water from a~~
 214 ~~reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development~~
 215 ~~Act, if the failure to deliver the contractual amount of water is due to drought, other natural~~
 216 ~~condition, or safety condition that causes a deficiency in the amount of available water.~~

217 ~~—— (2) Immunity from suit of each governmental entity is waived:~~

218 ~~—— (a) as to any action brought to recover, obtain possession of, or quiet title to real or~~
 219 ~~personal property;~~

220 ~~—— (b) as to any action brought to foreclose mortgages or other liens on real or personal~~
 221 ~~property, to determine any adverse claim on real or personal property, or to obtain an~~
 222 ~~adjudication about any mortgage or other lien that the governmental entity may have or claim~~
 223 ~~on real or personal property;~~

224 ~~—— (c) as to any action based on the negligent destruction, damage, or loss of goods,~~
 225 ~~merchandise, or other property while it is in the possession of any governmental entity or~~
 226 ~~employee, if the property was seized for the purpose of forfeiture under any provision of state~~
 227 ~~law;~~

228 ~~—— (d) subject to Subsection 63G-7-302(1), as to any action brought under the authority of~~
 229 ~~Utah Constitution, Article I, Section 22, for the recovery of compensation from the~~
 230 ~~governmental entity when the governmental entity has taken or damaged private property for~~
 231 ~~public uses without just compensation;~~

232 ~~—— (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney~~
 233 ~~fees under Sections 63G-2-405 and 63G-2-802;~~

234 ~~—— (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees~~
 235 ~~Act;~~

236 ~~—— (g) as to any action brought to obtain relief from a land use regulation that imposes a~~
 237 ~~substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious~~
 238 ~~Land Use Act;~~

239 ~~—— (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:~~

240 ~~—— (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,~~
 241 ~~crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or~~

242 ~~—— (ii) any defective or dangerous condition of a public building, structure, dam, reservoir, or~~

243 ~~or other public improvement; [and]~~
244 ~~—— (i) subject to Subsection **63G-7-201**(4), as to any injury proximately caused by a~~
245 ~~negligent act or omission of an employee committed within the scope of employment[.]; and~~
246 ~~—— (j) as to any action brought to obtain relief under Title 53B, Chapter 26, Part 2, Student~~
247 ~~Legal Representation.] ←~~